

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA PRIORITY

C O N F I D E N T I A L STATE 219151

EXDIS

E.O. 11652:GDS

TAGS: EMIN, EIND, ENRG, CA

SUBJECT: CALL BY CANADIAN AMBASSADOR TO RAISE POTASH AND
URANIUM ANTI-TRUST CASES

REF: STATE 217324

1. CANADIAN AMBASSADOR WARREN CALLED ON THE ACTING
SECRETARY AUGUST 31 TO EXPRESS CANADIAN CONCERNS ABOUT
U.S. JUSTICE DEPARTMENT ANTI-TRUST ACTIONS INVOLVING
URANIUM AND POTASH MARKETING. WARREN WAS ACCOMPANIED
BY ECONOMIC COUNSELOR MERKLINGER. WITH THE ACTING
SECRETARY WERE ACTING LEGAL ADVISER FELDMAN, DEPUTY ASS'T.
SECRETARY BOEKER, EUR/CAN DIRECTOR ROUSE AND STUART BENSON,
L/EB.

2. WARREN'S MAIN PITCH CONCERNED ANTI-TRUST URANIUM
INVESTIGATION. WARREN SUMMARIZED RECENT HISTORY OF INTER-
NATIONAL URANIUM MARKETING NOTING THAT IN LATE 60'S AND
EARLY 70'S U.S. NOT ONLY HAD EMBARGOED URANIUM IMPORTS BUT
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HAD EFFECTIVELY SET 8 DOLLAR CEILING PRICE INTERNATIONALLY

BY OFFERING FUEL AT THAT PRICE IN CONNECTION WITH REACTOR SALES. IMPACT ON CANADIAN PRODUCERS HAD BEEN GRAVE FORCING GOC TO INITIATE STOCKPILING IN ORDER TO AVOID EXTENSIVE MINE CLOSING. TO ALLEVIATE PROBLEM GOC EVENTUALLY HAD MOVED WITH OTHER PRODUCERS TO STRENGTHEN MARKET ESTABLISHING

POLICIES TO CONTROL PRICES AND EXPORTS. COMPANIES OPERATING IN CANADA WERE IN EFFECT DIRECTED TO CONFORM TO THESE POLICIES. THESE COMPANIES--INCLUDING RIO ALGOM WHICH HAS LARGEST SUPPLY CONTRACT WITH U.S. FIRMS FOR POST-EMBARGO PERIOD--ARE EXTREMELY UPSET SINCE THEY ARE NOW UNDER LEGAL PRESSURES IN THE U.S. FOR ACTIONS TAKEN TO MEET THE REQUIREMENTS OF CANADIAN GOVERNMENT DIRECTIVES. MOREOVER, IMPACT OF THESE ARRANGEMENTS ON THE U.S. HAD BEEN MARGINAL AT MOST AS U.S. WAS SPECIFICALLY EXCLUDED FROM ARRANGEMENTS AND HAD EMBARGO IN EFFECT AND SINCE INTERNATIONAL PRICES SET HAD BEEN LOWER THAN U.S. PRICE FOR ALL BUT LIMITED PART OF PERIOD INVOLVED. WARREN NOTED THESE POINTS HAD BEEN MADE BY GOC IN CONFIDENTIAL PAPER GIVEN AUGUST 5 TO STATE AND "LOANED TO JUSTICE" AFTER JUSTICE HAD MADE INQUIRIES OF CANADIAN FIRMS.

3. WARREN MADE CLEAR HE WISHED TO ELEVATE ISSUE ABOVE LEGAL CONSIDERATIONS INVOLVED. HE SAID JUSTICE INVESTIGATION COULD AT MOST ACHIEVE ONLY MEAGER SATISFACTIONS. WHEREAS IT WAS REGARDED AS FRONTAL ATTACK ON CANADIAN ENERGY POLICY, AND IF CARRIED THROUGH TO INDICTMENTS AND PROSECUTIONS, RISKED INTERFERING WITH URANIUM TRADE BETWEEN CANADA AND U.S. AND COULD CAUSE DIFFICULTIES IN BILATERAL AND INTERNATIONAL ENERGY RELATIONS. UNOFFICIALLY, WARREN WONDERED, SINCE INVESTIGATION APPEARED LIKELY TO BE COUNTER-PRODUCTIVE IN CONTEXT OF PRESENT ENERGY SITUATION WHETHER JUSTICE COULD NOT USE ITS DISCRETION TO DIRECT INVESTIGATING PRIORITIES ELSEWHERE.

4. ACTING SECRETARY NOTED THAT IF SITUATION WERE ONE WHERE U.S. HAD TAKEN ACTION WHICH LED TO NATURAL CANADIAN RESPONSE AND WE WERE NOW TURNING AROUND TO BASE INDICTMENTS ON THAT EXPECTABLE ACTION, SOMETHING WOULD CERTAINLY BE AMISS. HOWEVER, JUSTICE HAD EVIDENCE WHICH IF TRUE
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INDICATED COMPANIES INVOLVED MAY HAVE GONE BEYOND GOVERNMENT DIRECTIVES AND LIMITS OF CANADIAN POLICY. THIS EVIDENCE COULD FORM BASIS FOR DETERMINATION THAT ACTIONS WHICH WERE NOT SOVEREIGN ACTS HAD VIOLATED U.S. LAW. FELDMAN EXPLAINED THAT IN APPROPRIATE CIRCUMSTANCES FOREIGN POLICY CONSIDERATIONS CAN BE BROUGHT TO BEAR ON ANTI-TRUST INVESTIGATIONS, BUT THERE IS STRONG TRADITION OF INDEPENDENCE IN ADMINISTRATION OF ANTI-TRUST LAWS. HE

NOTED THAT JUSTICE HAD EXPLAINED THAT ITS INVESTIGATION HAD BEEN FASHIONED TO FOCUS ON ACTIVITIES TAKEN OUTSIDE OF GOVERNMENT ACTIONS AND POLICIES. IT WAS EXPLAINED THAT MUCH OF THE EVIDENCE INVOLVED HAD ONLY RECENTLY COME TO LIGHT AND NO DECISIONS IN THE CASE COULD BE REACHED UNTIL IT WAS FULLY ASSIMILATED. THE CASE IS STILL IN THE INVESTIGATORY STAGE WHICH COULD CONTINUE 8 OR 9 MONTHS. NO

INDICTMENTS ARE YET IN VIEW.

5. THE ACTING SECRETARY EXPRESSED APPRECIATION AT RECEIVING GOC VIEWS. HE STRESSED THAT U.S. WAS CONCERNED AT THE POTENTIAL IMPACT UPON OUR RELATIONS. WE WOULD WANT TO ENSURE THAT THE INVESTIGATION IS BEING CONDUCTED WITHIN THE LAW AND IN WAYS WHICH MINIMIZE ANY POLITICAL BY-PRODUCTS. WE UNDERSTAND CANADIAN CONCERNS AND WILL DO WHATEVER IS APPROPRIATE TO ALLAY THEM. AMBASSADOR WARREN REQUESTED AND IT WAS AGREED THAT WE WOULD KEEP IN CLOSE TOUCH AS INVESTIGATION PROCEEDS.

6. AMBASSADOR WARREN SAID HE HAD ALSO BEEN ASKED TO RAISE POTASH. HE EXPLAINED THAT NAMING OF PROMINENT CANADIANS AND FORMER OFFICIALS AS UNINDICTED CO-CONSPIRATORS IN THE CASE HAD STIRRED A SHARP REACTION IN CANADA. SASKATCHEWAN'S PREMIER BLAKENEY HAD CHARACTERIZED PROCESS AS CHARACTER ASSASSINATION AND AS AN EFFORT TO MAKE SASKATCHEWAN LAWS SUBJECT TO U.S. LAW. WARREN SAID PROCESS BY WHICH NATIONALS OF ONE COUNTRY ARE SUBJECTED TO DAMAGING ALLEGATIONS IN ANOTHER AND HAVE NO WAY TO CLEAR THEMSELVES EXCEPT BY SUBMITTING TO FOREIGN COURT JURISDICTION IS VERY TROUBLING. CANADA OF COURSE COULD NOT ACCEDE TO SUCH A PROCEDURE. FURTHER, POSSIBILITY THAT CANADIAN UNINDICTED CO-CONSPIRATORS MIGHT HAVE THEIR NAMES ADVISED

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TO THE FRONTIER AND IF VISITED U.S. COULD BE COMPELLED TO TESTIFY IN U.S. CASE, WAS ALSO POTENTIAL HORROR. POTASH CASE HAD CREATED SERIOUS STIRRING IN CANADA; IT WAS FORTUNATE HOUSE OF COMMONS WAS NOT IN SESSION AS THERE WOULD HAVE BEEN QUITE A ROW.

7. WARREN CONCLUDED BY NOTING THAT THIS CASE IS A DIFFICULT PROBLEM IN THE RELATIONSHIP WHICH CANADA HOPED WOULD BE HANDLED WITH CARE. HE UNDERLINED THE IMPORTANCE OF ADHERING TO A SPECIAL CHANNEL FOR CONTACTS BY JUSTICE WITH CANADIANS IN THE POTASH CASE NOTING THAT ALL SUCH CONTACTS SHOULD BE MADE THROUGH THE CHANNEL OF THE STATE DEPARTMENT--EXTERNAL AFFAIRS RATHER THAN NORMAL NOTICE PROCEDURES WITH THE MINISTRY OF CONSUMER AND CORPORATE AFFAIRS.

8. THE ACTING SECRETARY ASSURED WARREN THAT THE U.S. WAS SENSITIVE TO CANADIAN CONCERNS AND REGRETTED THE GOC HAD NOT BEEN BETTER INFORMED ABOUT THE NAMING OF CANADIANS IN THE CASE. FELDMAN EXPLAINED THAT THE NAMING OF UNINDICTED CO-CONSPIRATORS WAS NORMAL PRACTICE IN AN ANTI-TRUST CRIMINAL TRIAL. IT WAS POINTED OUT THAT JUSTICE HAD NOT INCLUDED ANY CANADIANS IN THE INDICTMENT EVEN AS UNINDICTED CO-CONSPIRATORS BUT HAD BEEN OBLIGED TO RELEASE THE NAMES WHEN DEFENDANTS FILED A MOTION FOR PARTICULARS.

9. FELDMAN NOTED THIS CASE DID NOT INVOLVE ISSUE OF EXTRATERRITORIAL APPLICATION OF U.S. LAW TO SUBSIDIARIES OF U.S. COMPANIES THAT HAS TROUBLED GOC IN PAST. THE CONSPIRACY ALLEGED IS NOT IN THE ADMINISTRATION OF SASKATCHEWAN'S PRORATIONING SCHEME BUT THE LIMITATION OF PRODUCTION AND PRICE ARRANGEMENTS IN THE U.S. IN SUPPORT OF THE SASKATCHEWAN PROGRAM. THE INDICTMENT REFERS TO CONTROL OF IMPORTS INTO THE U.S. FROM OUTSIDE THE WESTERN HEMISPHERE. THIS INDICATES IT IS NOT DIRECTED AT CANADIAN PRODUCTION. IT IS ALLEGED THAT THE CANADIAN CO-CONSPIRATORS DISCUSSED CONTROL OF U.S. PRODUCTION AND PRICES WITH THE DEFENDANTS AND EVEN TRIED TO INDUCE THESE RESTRAINTS IN THE UNITED STATES.

10. THE ACTING SECRETARY SAID THE U.S. WOULD LOOK INTO THE QUESTION OF COMPELLING TESTIMONY BY CANADIAN CO-CONFIDENTIAL

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CONSPIRATORS. HE STRESSED THE U.S. WOULD FOLLOW THE INVESTIGATION CAREFULLY AND WITH SENSITIVITY TO THE CONCERNS EXPRESSED BY CANADA. ROBINSON

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